IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.345 OF 1989

The State of Maharashtra ...Appellant

Vs.

1. Ajit Bhaskar Patil
2. Mahadeo Rama Ladikhan @ Bagwale ...Respondents

Mr. D.S.Mhaispurkar for the Appellant.
Mr. A.G.Toraskar with J.A.Barday for the Respondents.

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : OCTOBER 28, 2004.

ORAL JUDGMENT : **(PER ABHAY S.OKA,J.)**

1. By this appeal against acquittal the Appellant-State Government has taken exception to the Judgment and Order dated 20th January 1989 passed by the learned Assistant Sessions Judge, Raigad at Alibag by which the Respondents-Accused were acquitted of the offence punishable under Section 307 read with Section 34 of Indian Penal Code (hereinafter referred to as the said Code).

2. The case of the prosecution is that on 20th April 1987 one Kishor Patil, a resident of village Agrav had gone to village Rewdanda along with his friend Vijay. They went to Rewdanda by a bicycle. At about 9.p.m. they were returning from Rewdanda to Agrav. On the way, Vijay went away along with his uncle and Kishor alone proceeded to Agrav. While he

was passing by the side of the temple of 'Mariai' @ Bhitad Devi the accused accosted him. The Accused No.2 Mahadeo caught hold of Kishor as a result of which he fell down from the bicycle. The Accused No.2 thereafter caught his hand and the accused No.1 started giving blows on the person of Kishor by a weapon known as 'Kati' (a big knife used for cutting fish). Kishor sustained bleeding injuries around his neck, on his right arm and on his face. According to the prosecution accused presumed that the said Kishor had died and therefore they carried him to an adjoining well and threw him in the well. They also threw the cycle in the well. Kishor was afraid of his life and therefore he did not shout immediately. After some time, he shouted for help.

3. At that time, P.W.No.1 Yunus Tandel who was passing by heard the shouts and went near the well. On the instructions of Kishor, he went to house of Kishor at Agrav and narrated the incident to the brother and mother of Kishor. Thereupon, the complainant Suresh i.e. the brother of Kishor along with P.W.No.1 Yunus came near the well and with the help of a rope they brought Kishor out of the well. The complainant Suresh along with Kishor went to Rewdanda Police Station. The police immediately sent the injured to the Government dispensary but unfortunately there was no Doctor present in the dispensary. Therefore, all of them proceeded to Alibag to the Civil Hospital. The victim was treated in the civil hospital and in the meanwhile the complainant approached the

Alibag police station. The Doctors of Civil Hospital of Alibag referred Kishor to a Hospital in Mumbai for further medical treatment. The Alibag Police Station forwarded the complaint to Rewdanda Police Station. The Rewdanda Police Station registered the offence and started investigation. A charge was framed against the accused for offence punishable under Section 307 read with 34 of I.P.C.

4. Shri Mhaispurkar learned A.P.P. for the State submitted that there was no reason for the learned Sessions Judge to reject the testimony of the victim Kishor. He submitted that the delay in recording the F.I.R. has been satisfactorily explained by the prosecution. He stated that the injured was taken to Rewdanda police station and as he was suffering from grievous injuries, without wasting any time, he was referred to the dispensary at Rewdanda and from Rewdanda dispensary the injured was taken to the Civil Hospital at Alibag. As the complainant accompanied the victim to Alibag the complaint was filed by him with Alibag police station. Immediately the victim was admitted in the Civil Hospital. He submitted that the victim was not at all in a state of mind to tell the P.W.No.1 regarding the incident. He stated that only after the complainant Suresh who is brother of the victim arrived at scene, victim thought it fit to disclose the names of the accused. He submitted that the evidence of P.W.No.1 Yunus and P.W.No.5 Suresh supported the prosecution. He submitted that the medical evidence also corroborates the

case of the prosecution.

5. Shri Toraskar learned Counsel appearing for the Respondents supported the impugned Judgment and Order. He submitted that considering the discrepancies and contradictions in the evidence of the witnesses, the learned Sessions Judge has rightly disbelieved the prosecution case. He submitted that there was no reason to take a different view in an appeal against acquittal.

6. We have considered the rival submissions and we have read the evidence on record. P.W.No.1 Yunus stated that he heard the shouts for help while he was passing by the temple. He went near the well and saw in the light of a torch that the victim Kishor was standing inside the well and the water in the well was up to his chest. On the request made by Kishor he went to the village Agrav and informed about the incident to the mother of Kishor who inturn called the elder brother of Kishor, Suresh-P.W.No.5. P.W.No.5 rushed to the well. With help of a rope he brought Kishor out of the well. In the cross examination he admitted that Kishor did not inform him the names of the accused. He also stated that Kishor did not inform the names of the assailants to his brother Suresh in his presence.

7. P.W.No.5 Suresh is not an eye witness. However, he pulled out Kishor from the well and took him to Rewdanda

police station from where he took Kishor to the dispensary at Rewdanda. As there was no Doctor available, he took Kishor to the Civil Hospital at Alibag and thereafter lodged a complaint with Alibag Police Station. He admitted in the cross examination that there were criminal cases pending between himself and the accused. He admitted that he did not mention in the complaint filed in the Alibag police station that police at Rewdanda had refused to take his complaint. P.W.No.6 Kishor is the victim. He deposed in examination-in-chief as per the prosecution story. He admitted that after he was thrown in the well he was conscious and for a period of 20-25 minutes he did not shout. In the cross examination he stated that when he received strokes from the accused he could not shout as the accused No.2 has put thumb of foot in his mouth. He admitted that it was not mentioned in his statement before the police that the accused Mahadeo has kept thumb of his foot on his mouth. He stated that the police purposely omitted the said sentence as the police could not get any money from him. A suggestion was given to him that he threw his cycle in the well and then collapsed in the well on his own. He denied the suggestion given to him that under the influence of liquor he threw away his bicycle in the well and thereafter, he fell down in the well.

8. The map showing the scene of offence is at Exh.3 which shows that there is a distance of 25 feet between the temple

and the well. The said map shows that the blood stains are around the well. There is no evidence on record to show that there were blood stains by the side of the road near the temple. It has come on record that there is hardly any damage to the bicycle which was allegedly thrown in the well by the accused. The said fact is noted in the judgment by the leaned Sessions Judge.

9. P.W.No.11-Keshav Baburao Kejkar is the Investigating Officer. He admitted that a so called dying declaration of the victim Kishor was recorded by the Executive Magistrate. A copy of the said dying declaration has not been filed on record. Though the said document could not have been received in the evidence as a dying declaration, it could have been read as a prior statement of the victim Kishor. He admitted that the blood stained soil was collected near the place of incident and the same was not sent to the chemical analyser. There is no explanation as to why the so called dying declaration was not placed on record. It is pertinent to note that though Shri Nagwekar, the then Executive Magistrate who allegedly recorded the dying declaration was cited as a witness he was not examined.

10. The behaviour of Kishor of not shouting while he was being assaulted is very curious. The fact that even after he was thrown into the well he did not shout for a period of 25 minutes makes the prosecution story suspicious. Further the

said Kishor did not disclose to P.W.No.1-Yunus the names of the accused. P.W.No.1 Ynus was the first person who met Kishor after the incident. It is to be noted here that on inspection of the bicycle which was seized from the well the learned Judge noted that there was no damage to the mirror of the bicycle and to the tyres. Moreover, there is no recovery of weapon used in the assault. The medical certificate at Exh.23 shows that one of the injuries caused to Kishor was with hard and blunt object. The allegation is that the accused had used Kati which is a big and sharp knife like weapon is used for cutting fish.

11. We find that it is very difficult to keep implicit faith in the evidence of Kishor. There is no corroboration to the version of Kishor from other evidence. Therefore, it cannot be said that the view taken by the learned Judge is not a possible view. This being an appeal against acquittal even if it is assumed that it is possible to take some other view of the matter, it is not at all a ground to interfere in an appeal against acquittal. Hence, no interference is possible in this appeal.

12. Appeal is dismissed.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)